IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12237 of 2007
With
SPECIAL CIVIL APPLICATION No. 12238 of 2007
With
SPECIAL CIVIL APPLICATION No. 11973 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAIJIBEN WD/O TEJSING GAMAN & 4 - Petitioner(s)
Versus
HARISING BHIKHABHAI & 11 - Respondent(s)

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Appearance :
MR MA KHARADI for Petitioner(s) : 1 - 5.
None for Respondent(s) : 1,3 - 12.
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/05/2007

ORAL JUDGMENT

As common question of law and facts arise in these group of petitions and common judgment and order passed by the Gujarat Revenue Tribunal (for short “the GRT”) in Revision Application Nos. TEN.BA 145 of 2005, BA 277 of 2006 and BA 278 of 2006 are challenged in these group of petitions, they are being disposed of by this common judgment and order.

2. The dispute is with regard to the land bearing survey No.820 admeasuring 1 acre and 13 gunthas in the sim of village Gorwa, Tal & Dist: Vadodara. The said land originally belonged to the respondent No.1 herein Harising Bhikhabhai. It was the case on behalf of the original revisionist before the GRT that by registered sale deed dated 1-6-1962, their grand mother purchased the aforesaid land for a sale consideration of Rs.1999. That proceedings under section 84(C) of the Bombay Tenancy Act (for short “the Act”) were initiated by the Mamlatdar and ALT, Vadodara being Tenancy Case No.4425 of 1976 and by order dated 15-6-1979, the aforesaid sale was declared invalid. A tenancy appeal No.19 of 1981 was preferred before the Deputy Collector (LR), Vadodara against the aforesaid order, which came to be dismissed. That the

respondent No1 herein preferred Revision Application No.1547 of 1983 challenging the aforesaid order before the GRT and by order dated 4-8-1989, the said revision application was partly allowed and the matter was remanded to the Mamlatdar and ALT to decide the matter *de novo* by following proper procedure and after hearing the interested parties. That against that, Tenancy Case No.6135 of 1989 was registered under section 84(C) of the Act and by order dated 29-3-1993, the transaction was held invalid and the land was ordered to be vested in the State Government under section 84(C)(3).

In the meanwhile, one Tejsing Gamanbhai, predecessor of the petitioner submitted an application to the Mamlatdar and ALT claiming that he is the tenant of the land and purchase price be fixed. The said application was registered as tenancy case No.5557 of 1985 and by order dated 21-10-1985, the proceedings were dropped. The Deputy Collector reviewed the aforesaid order dated 21-10-1985 under section 76-A of the Act being tenancy revision application No.170 of 1986 and by order dated 7-3-87, the order passed by the Mamlatdar and ALT dated 21-10-1985 was quashed and the matter was remanded to the Mamlatdar and ALT and on remand by order dated 28th May 1989, said Tejsing was directed to file fresh application under section 32-P of the Act. It appears that said Tejsing

submitted application under section 32(1)(B) of the Act. It also appears that at the same time, the RTS squad also recommended to conduct the case for deciding the purchase price. The order of the Mamlatdar and ALT dated 20-4-1989 was also reviewed by the Deputy Collector under section 76-A of the Act being tenancy revision case No.59 of 1990 and he quashed and set aside the order of the Mamlatdar and ALT and remanded the matter to him. All these four proceedings were treated as tenancy case Nos.1540 of 1989, 6326 of 1991, 6327 of 1991 and 6508 of 1992. The Mamlatdar and ALT was pleased to hold that the transfer by registered sale deed is in contravention of the provisions of the Act and is illegal and order to proceed under section 84-C of the Act. Thus, by order dated 29-3-1993, two orders were passed, one to proceed under section 84-C of the Act and second to confiscate the land in question to vest to the State Government. It appears that said Tejsing alleged to be the tenant did not challenge either of the orders but the purchaser i.e. son of widow Bai Dama (Bai Dakha) and original landlord Harising Bhikhabhai challenged the aforesaid orders by filing tenancy appeal Nos.100 of 1993 and 101 of 1993. It appears that both the appeals were admitted and fixed for final hearing and stay was granted.

In the meanwhile, the Deputy Collector decided to review

the orders dated 29-3-1993 exercising the powers under section 76-A of the Act and by order dated 12-3-1998 set aside the aforesaid order and the order passed in tenancy case No.6135 of 1989 came to be confirmed. It appears that the Asst. Collector, Vadodara by order dated 31-7-95 decided to drop the proceedings of tenancy appeal Nos.100 of 1993 and 101 of 1993 on the basis of the information received from the Mamlatdar that the matters have been taken in suo motu revision under section 76-A of the Act passed by the Deputy Collector.

3. Being aggrieved by the orders passed by the Deputy Collector (LR), Vadodara dated 12-3-1998 passed in revision application No.966 of 1993, the respondent Nos.4 to 9 herein, original revisionist preferred revision application No.TEN BA 145 of 2005. It appears that during the course of the proceedings before the Tribunal and revision application No.145 of 2005, the respondent Nos.4 to 9 herein, original revisionists when came to know of the order passed by the Asst. Collector dated 31-7-1995 passed in tenancy appeal Nos.100 of 1993 and 101 of 1993, also challenged the said order by way of revision application Nos. TEN BA 277 of 2006 and 278 of 2006. The GRT heard all the aforesaid revision

applications i.e. TEN BA 145/05, BA 277/06 and BA 278/06 together. So far as revision application Nos. TEN BA 277 of 2006 and 278 of 2006 which were filed against the order passed by the Asst. Collector, Vadodara dated 31-7-1995 in dismissing the tenancy appeal Nos.100 of 1993 and 101 of 1993 solely on the ground that the order/appeal has been taken under suo motu by the Deputy Collector, the GRT by impugned common judgment and order and considering section 76-A of the Act observed and held that the order passed by the Asst. Collector dated 31-7-1995 was on misinterpretation of section 76-A of the Act and he ought not to have dismissed the aforesaid two appeals on the ground that the Deputy Collector has reviewed the suo motu revisional powers against the order/appeal and accordingly, quashed and set aside the order passed by the Asst. Collector and by impugned judgment and order has remanded the aforesaid two appeals to the Asst. Collector, Vadodara for deciding the same afresh in accordance with law and on merits.

4. So far as revision application No.TEN BA 145 of 2005 which was filed agiasnt the order passed by the Deputy Collector (LR), Vadodara dated 12-3-1993 in tenancy appeal No.966 of 1993 is concerned, the GRT by its impugned

judgment and order has allowed the said revision application and quashed and set aside the order passed by the Deputy Collector by holding that the order passed by the Deputy Collector was passed without joining the heirs of Prahladji, - original opponent No.2 on record and the said decision was taken in absence of interested, necessary and proper parties i.e. the purchaser and the same was in breach of principles of natural justice. Being aggrieved by the common judgment and order passed by the GRT, Ahmedabad dated 20-2-2007 passed in Revision Application Nos. TEN.BA 145 of 2005, BA 277 of 2006 and BA 278 of 2006, the respective petitioners herein have preferred the present petition under Article 227 of the Constitution of India.

5. Shri Kharadi, learned advocate appearing on behalf of the respective petitioners has assailed the impugned judgment and order of the GRT as bad, illegal and against the principles of natural justice on the following grounds.

- The learned Tribunal has committed grave error in entertaining revision application No.145 of 2005 though it was filed after causing delay of more than seven years.
- The learned Tribunal has committed grave error in holding that the order passed in suo motu Revision Case

No.966/93 is illegal and in breach of principles of natural justice.

- That the learned Tribunal ought to have appreciated that one of the respondents Prahladji i.e. heir of the purchaser died only on 23th July 1997 and the order was passed by the Deputy Collector on March 12, 1998 or the learned Tribunal ought to have appreciated that the notices in the suo motu revision application No.966/93 were also issued to the concerned parties including Prahladji and the matter was adjourned from time to time. Thus, it cannot be said that the order passed by the Deputy Collector in Revision Case No.966/93 was in breach of principles of natural justice.
- The learned Tribunal has materially erred in quashing and setting aside the orders passed by the Asst. Collector, Vadodara dated 31-7-1995 passed in Tenancy Appeals Nos.100 of 1993 and 101 of 1993.

By making the above submissions, he has requested to allow the present petitions.

6. The learned Government Pleader has tried to support the judgment and order passed by the GRT. Shri Shethna, learned

advocate appearing on behalf of the private respondent, - original revisionist while supporting the common judgment and order passed by the GRT has vehemently submitted that at the time when the Deputy Collector passed the order in suo motu revision application No.966 of 1993 i.e. on 12-3-1998, Prahladji heir of the purchaser has already died and the heirs of Prahladji were not brought on record and as such the order passed by the Deputy Collector, Vadodara dated 12-3-1998 passed in Suo motu revision application No.966 of 1993 was a nullity and against the dead person and the same has been rightly quashed and set aside by the Tribunal. He has also further submitted that so far as revision application No. TEN BA 277/06 and 278/06 is concerned, considering the fact that the Asst. Collector, Vadodara has dismissed the tenancy appeal Nos.100 of 1993 and 101 of 1993 by misinterpreting section 76-A of the Act, the same is also rightly quashed and set aside by the Tribunal and the Tribunal has not committed any error in allowing the revision application Nos. TEN BA 277/06 and 278/06. therefore, it is requested to dismiss all the petitions.

7. Heard the learned advocates appearing on behalf of the parties.

8. It is required to be noted that so far as revision application No.TEN BA 145 of 2005 before the GRT is concerned, the same was against the order passed by the Deputy Collector (LR), Vadodara passed in suo motu revision application No.966/93 dated 12-3-1998. It is also required to be noted that one of the respondents Prahladji i.e. heir of purchaser Baidama had died on 23rd April 1997 i.e. prior to the decision of the Deputy Collector, Vadodara dated 12-3-1998 and admittedly, heirs of said Prahladji were not brought on record and thus, the order passed by the Deputy Collector is against the dead person and the same is a nullity and the learned Tribunal has rightly quashed and set aside the order passed by the Deputy Collector by holding that the same is a nullity and is in breach of principles of natural justice. No illegality has been committed by the GRT in allowing the revision application No. TEN BA 145 of 2005. There is no jurisdictional error much less any error of law committed by the GRT which warrants interference of this Court in exercise of powers under Article 227 of the Constitution of India.

9. So far as allowing the revision application Nos. TEN BA 277/06 and 278/06, which were filed against the order passed by the Asst. Collector, Vadodara passed in Tenancy Appeal

Nos.100 of 1993 and 101 of 1993 is concerned, it is required to be noted that the tenancy appeal Nos.100 of 1993 and 101 of 1993 were preferred against the order passed by the Mamlatdar and ALT dated 29-3-1993 and the same came to be dismissed by the Asst. Collector solely on the ground that the very order/appeal in tenancy appeal Nos.100 of 1993 and 101 of 1993 was taken under suo motu revision by the Deputy Collector (LR), Vadodara under section 76-A of the Act. Now considering the provisions of section 76-A of the Act, the Asst. Collector, Vadodara has misinterpreted the provisions of section 76-A of the Act. Section 76-A of the Act reads as under:

> ***"Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time-***
>
> ***[a] call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality of propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal as the case may be, and***
>
> ***[b] pass such order thereon as he deems fit;***
>
> ***provided that (no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar***

or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

10. Now, considering section 76-A of the Act where no appeal has been filed within the period provided for it, the Collector may suo motu exercise the revisional jurisdiction and call for the record of any inquiry or the proceedings of the Mamlatdar or the Tribunal. However, in the present case, the appeals were preferred being tenancy case Nos.100 of 1993 and 101 of 1993, therefore, as such as the appeals were preferred, the Collector was not having any jurisdiction to exercise the suo motu revisional powers. However, misinterpreting the aforesaid provision, the Asst. Collector held other way round that as the suo motu revisional powers are exercised by the Deputy Collector, the appeals are required to be dismissed. This is nothing but misreading and misinterpreting section 76-A of the Act. Even, the learned advocate appearing on behalf of the respective petitioners is also not in a position to satisfy this Court how the order passed by the Asst. Collector, Vadodara in dismissing the appeal Nos.100 of 1993 and 101 of 1993 can be sustained. Now considering the above, when the order passed by the Asst. Collector Vadodara dated 31-7-1995 is set aside

and the matter is remanded to the Asst. Collector, Vadodara for deciding the said appeals afresh in accordance with law and on merits, it cannot be said that the GRT has committed any illegality which calls for any interference of this Court in exercise of powers under Article 227 of the Constitution of India. Thus, on all counts, all the petitions are required to be and are accordingly dismissed. No costs.

(M.R. Shah, J.)

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